

2003 DRAFTING REQUEST**Bill**Received: **11/14/2002**Received By: **mdsida**Wanted: **As time permits**

Identical to LRB:

For: **Carol Owens (608) 267-7990**By/Representing: **Linda**This file may be shown to any legislator: **NO**Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - procedure
Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Owens@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Senior citizen court programs

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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→ At Intro.

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FE Sent For:

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1-12/20-
kmq**b/23
pg**12/23**<END>**pg/ch*

1 **AN ACT** to create 971.41 and 973.115 of the statutes; relating to: the senior court
2 program.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: This bill draft creates the senior court program. A person who is charged with a misdemeanor for which there is no mandatory period of imprisonment and who was under age 25 when the offense was committed is eligible for the program if the court decides placement in the program would benefit the person and the community.

Under the bill draft, the person must enter into a deferred prosecution agreement in order to be eligible for placement in a senior court program. Under the agreement, upon successful completion of the senior court program, the charges against the person are dismissed.

3 **SECTION 1.** 971.41 of the statutes is created to read:

4 **971.41 Deferred prosecution agreement; placement with community court**
5 **program.** The court, district attorney and defendant may enter into a deferred prosecution
6 agreement for the defendant to be placed with a senior court program under s. 973.115. The
7 agreement must include the requirement that the defendant comply with the court's order
8 under s. 973.115 (1).

9 **SECTION 2.** 973.115 of the statutes is created to read:

10 **973.115 Placements with senior court program. (1) PLACEMENTS.** The court may
11 withhold sentence or judgment of conviction and order that a person be placed in a senior court
12 program if the person is convicted of or pleads guilty or no contest to one or more
13 misdemeanors for which mandatory periods of imprisonment are not required and that the
14 person committed when he or she was under age 25, if the chief judge of the judicial

1 administrative district has approved a senior program established in the applicable county, and
2 if the court decides that the senior court program will likely benefit the person and the
3 community and subject to the limitations under sub. (3). Except as provided in sub. (3), the
4 order shall provide any conditions that the court determines are reasonable and appropriate.

5 **(2) Approval of programs.** In each judicial administrative district under s. 757.60, the
6 chief judge of the district may approve senior court programs established in the district for
7 placements under this section.

8 **(3) Status.** A defendant who is placed with a senior court program under sub. (1) is
9 subject to the conditions set by the court. The defendant is not on probation under ss. 973.09
10 and 973.10 and the department is not responsible for supervising him or her. A court may place
11 a defendant under sub. (1) prior to conviction only if a deferred prosecution agreement is
12 reached under s. 971.41. In that case, the person is subject to the conditions set by the court
13 under this section and the conditions provided in the agreement.

14 **(4) Term.** The court shall set the length of the order, which may not exceed 2 years
15 unless extended pursuant to a hearing under sub. (5). When the defendant has satisfied the
16 conditions of the order, the court shall discharge the defendant and dismiss the charges against
17 the defendant if a judgment of conviction was not previously entered.

18 **(5) Failure to comply with order.** (a) (intro.) If the defendant is alleged to have
19 violated the conditions of an order under sub. (1), the court may hold a hearing regarding the
20 allegations. The court shall notify the defendant at least 7 days prior to holding any such
21 hearing. At the hearing, the defendant has the right to each of the following:

- 22 1. Counsel.
- 23 2. Remain silent.
- 24 3. Present and cross-examine witnesses.

(END)

Original URL: <http://www.jsonline.com/news/state/sj01/out29092801a.asp>

First-time offenders face their elders

Seniors impose penalties in Outagamie program

By CHRIS NELSON

Special to the Journal Sentinel

Last Updated: Sept. 28, 2001

Appleton - Young first-time offenders who commit minor crimes in Outagamie County are getting a second chance under a new program in which they appear before a panel of senior citizens instead of a judge or jury.

The "community court" program, the only one of its kind in the state, is patterned after teen courts that are used in several Wisconsin counties in which teenagers act as judges for other teens who break the law, said Outagamie County District Attorney Vince Biskupic. In this case, the offenders are between the ages of 17 and 25, and are judged by a panel of seniors.

Biskupic said the three sessions of community court held so far had saved several thousand dollars in costs of judges, prosecutors, public defenders and other court personnel. Instead of making two or three Circuit Court appearances, defendants appear before the community court only once. The court is staffed by a judicial assistant and an investigator from the district attorney's office or a sheriff's deputy, who acts as bailiff.

Defendants who participate in the program must sign a deferred prosecution agreement to avoid a criminal conviction on their records. The terms of the agreement are determined by a panel of three volunteer seniors, who review the police reports, question the defendant and listen to his or her side of the case.

Defendants must sign a contract that says that charges will be filed against them if they re-offend during the contract period, which can range from six to 18 months. Other penalties may include restitution, community service, counseling, no-contact rules and employment or education requirements.

Those in the program are charged with misdemeanor offenses such as disorderly conduct, retail theft and possession of marijuana. In addition to handing down "sentences," the members of the community court can - and do - offer advice to offenders.

At a recent hearing, Lloyd Kloehn, a retired postal worker, told a 17-year-old: "Next time you won't be this lucky. You'll be up in front of a man in a black robe instead of us old fogies."

One disorderly conduct defendant who was accused of directing vulgar language at police officers told the panel he felt that police harassed younger people.

He didn't get much sympathy from Richard Cline, a retired obstetrician, however.

"Next time, you may go to jail. This is a good deal for you. You have to straighten out your attitude, straighten out your life."

The panel ordered the young man to write letters to the arresting police officers, explaining why it was necessary to have laws and police, and what etiquette was proper when confronted by police.

The reaction of the defendants to the new court was favorable.

"I'm really glad they let me have a second chance because there are a lot of people who won't," said one 17-year-old.

Another was grateful that he didn't have to face the cost of a full court proceeding. "I would have had to hire a lawyer," he said.

Biskupic, who spearheaded community court, said the program "saves money and time, and gives an opportunity for senior citizens to play an active role in the justice system."

Community court saves time — and money

By Linda Werner
Staff Reporter

Time is money in the Outagamie County District Attorney's office. A community court diversion program initiated this spring is designed to save both.

"We look for alternatives on certain types of cases rather than taking them into circuit court," said Vince Biskupic, Outagamie County district attorney. "We're 60 percent understaffed for prosecutors."

Biskupic sees the community court as a way to end or curtail the behavior of first-time or minor offenders without exhausting too many court resources.

Community court takes the concept of deferred prosecution one step further. Instead of making two to three circuit court appearances before an agreement is reached (on the

conditions a defendant must meet to have the charges removed from his or her record), the individual only makes one appearance before the community court. A judge, clerk of courts or public defender is not needed. It also essentially eliminates the district attorney's office from the equation.

"Part of the goal is to remove ourselves from the process," Biskupic said. An administrative assistant in the district attorney's office handles the paperwork and the mechanics of setting up court times.

"It's a way to do deferred prosecution with eliminating some of the cost," Biskupic said.

In the community court, a three-member volunteer board determines what requirements a defendant must meet over what length of the time. Board members may assign a time period of six to 18 months for completion of any

requirements they might impose. Just as in circuit court, the options may include community service, restitution, counseling, no contact rules, employment, education or other stipulations.

"The only minimum requirement is that they cannot have any further criminal conduct," Biskupic said.

Ron Sanderfoot, one of the community court volunteers, said he thinks directives set by the community court are similar to what might be handed down in circuit court.

"We do have some references and we have a deputy sheriff in there who can guide us along," he said. Retired sheriff's alternate Grant Krueger acts as

the bailiff during the hearings. A court reporter is also present so all actions are recorded.

"It's a good way for first offenders" to have their cases handled, Sanderfoot said. He was glad to be asked to participate in the project. Sanderfoot, now retired, has worked with young people in volunteer programs most of his life. The primary age group community court serves is 17 to 21.

"I've always been interested in younger people," he said.

Once an agreement is made, the contract is signed by the community court board members and the defendant. The defendant then submits bi-monthly reports to the DA's office reporting on compliance and progress meeting the terms of the agreement.

"Once the contract is signed, we monitor it," Biskupic said.

So far, about two dozen cases have been heard in two sessions of community court — one in May and one in July. The next court date is scheduled for Aug. 30.

Sanderfoot, who participated in both of the initial sessions, said it was not difficult for the three-member panel to come to a consensus on each case.

Panelists are allowed to ask the defendant questions to clarify the situation for the board. Another court volunteer, Ronald Zeihen of Appleton said that's important.

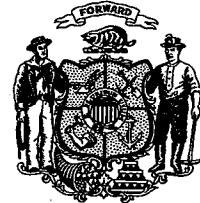


Vince Biskupic

The community court process starts when charges are sent to the district attorney's office. The defendant is then sent a letter, information about the community court process and offered a time to appear. If the defendant declines, the case automatically goes to circuit court and the usual judicial process kicks in. If the defendant chooses to attend community court, the public defender's office may not have a representative available because the case won't be heard in circuit court but defendants may hire an attorney if they wish and are able to do so.

Biskupic thinks his office can do up to about 100 cases per year in community court, given current staffing levels. This first year is a pilot period, with Biskupic's office tracking the successes and failures of the program, as well as the cost.

Last year the Outagamie County District Attorney's Office processed 8,042 cases.



State Representative
Carol Owens

53rd Assembly District

- ☐ In response to your recent request.
☐ I thought you might be interested in the enclosed material.

11/12/02

Mr. Dsida,

Attached is the Senior Court legislation we spoke about.

Please re-draft as is for the upcoming session.
Thank you.

Linda Narveson

Staff

P.O. Box 8953 • Madison, Wisconsin 53708-8953

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Rep.Owens@legis.state.wi.us • District: (920) 589-4262

- 1 AN ACT to amend 303.09, 974.06 (1), 974.06 (3) (intro.), 974.06 (3) (d),
2 974.06 (4), 974.06 (6) and 974.06 (8); and to create 971.40 and 973.11
3 of the statutes, relating to placing criminal defendants with volun-
4 teers in probation programs.

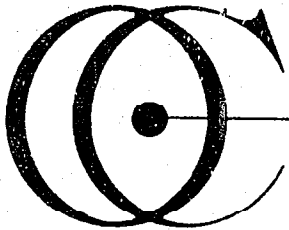
Analysis by the Legislative Reference Bureau

Currently, volunteers assist in providing various criminal and juvenile justice services. For example, under general authority to impose reasonable and appropriate conditions of probation, judges may authorize volunteers to meet periodically with probationers. This bill creates a sentencing option whereby a court may order that a misdemeanor offender be placed with a volunteers in probation program. This option is available only if the chief judge of the judicial administrative district has approved a volunteers in probation program that is established in the applicable county. Defendants sentenced under this option are subject to the conditions set by the court and are not subject to supervision by the department of corrections. The bill also permits, prior to the entry of a judgment of conviction, the court, district attorney and misdemeanor defendant to enter into a deferred prosecution agreement that requires a placement with a volunteers in probation program.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly,
do enact as follows:

- 5 SECTION 1. 303.09 of the statutes is amended to read:
6 303.09 HUBER FACILITIES. (1) The county board of any county may
7 establish, relocate and maintain an unlocked facility for use exclusively
8 by persons granted leave privileges under s. 303.08 (1) and persons con-



OUTAGAMIE COUNTY

410 S WALNUT ST. APPLETON, WISCONSIN 54911 COURT HOUSE

JUDGE JOSEPH M. TROY

CIRCUIT COURT BRANCH NO. 3 PHONE (414) 832-5245

JOAN K. BIESE
COURT REPORTER

BECKY A. RUSCH
COURT REPORTER

PAULA J. DORSEY
JUDICIAL ASSISTANT

October 16, 1991

Senator Carol Buettner
322 South, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707

Ms. Brenda Hixon
322 South, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707

RE: VOLUNTEERS IN PROBATION LEGISLATION

Dear Senator Buettner and Ms. Hixon:

Thank you for your recent note and enclosures regarding the Volunteers in Probation Bill. I enclose to you a letter to District Attorney Frisch, to, hopefully, get a written response regarding their affirmative vote.

The concerns of Attorney Cohen and Attorney Mazack should be easily addressed.

In particular, I believe that Mr. Cohen and his organization would be well-satisfied with a slight change that would permit a finding of guilt, and a placement of the offender on a deferred prosecution agreement. This would accomplish the same thing as withholding a judgment. It has the additional advantage in that most judges and district attorneys are more amenable to this procedure. Similarly, Ms. Mazack's concerns can be easily addressed without substantial change in the proposed legislation.

I would be pleased to try to work with anyone that you suggest to make some small modifications to accommodate these concerns. It is probably advisable to do it now, rather than having to amend it at some later time.

Please let me know how you would like to proceed. Also, please let me know if there is any additional help that I can provide.

Sincerely,


Judge Joseph M. Troy

JMT/pjd

cc: Attorney Cohen
Attorney Mazack



Wisconsin Association of Criminal Defense Lawyers

1126 S. 70th Street • Milwaukee, WI 53214 • (414) 475-2436 • FAX (414) 475-2517

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SEP 20 1991

September 18, 1991

Senator Carol Buettner
State Capitol Building, 323 South
P.O. Box 7882
Madison, WI 53707-7882

Re: Volunteers in Probation Bill

Dear Senator Buettner:

I previously wrote to you on June 26, 1991, but Brenda told me that my letter is nowhere to be found. Therefore, I will restate the substance of my previous correspondence.

On behalf of the Wisconsin Association of Criminal Defense Lawyers, I have enclosed a copy of your proposed bill with our suggested changes. Your bill was received very favorably by the Board of Directors at its meeting on June 22, 1991. The Board felt, however, that the Volunteers in Probation program should not be limited to those cases which have resulted in a conviction. There are many misdemeanor cases in the system which, I am sure prosecutors and judges would agree, could be disposed of without requiring litigation or a conviction, by using the Volunteers in Probation program. The proposed changes which I have suggested will simply provide the trial judge with the discretion to dispose of a pending case without a conviction, by placing the defendant with the Volunteers in Probation program if it will likely benefit the person and the community. A judge still has the authority to enter a conviction against the defendant if the judge believes that it is the appropriate thing to do.

I discussed our proposed changes generally with Judge Troy, and he was in favor of providing the statutory authority to place people under the supervision of Volunteers in Probation prior to conviction as a means to divert certain cases that may not need to proceed through the judicial system all the way to trial or plea. Judge Troy indicated that certain cases were

Senator Carol Buettner
September 18, 1991
Page 2

already being diverted to the V.I.P. program but through a more roundabout process.

The Wisconsin Association of Criminal Defense Lawyers intends to support your bill and would be pleased to be listed as a sponsor on the bill.

Once you have had an opportunity to consider our proposed additions to the bill, please contact me directly.

Sincerely,



Barry S. Cohen
Co-Chairman
Legislative Committee

BSC/tai

cc: Hon. Joseph Troy (w/encl.)
Attorney James Walrath,
Co-Chairman (w/encl.)
Attorney Randy Paulson
Committee Member (w/encl.)
Attorney Stephen Meyer
President (w/encl.)

tai\sep\misc\buettner.ltr

1991-92 Legislatu.

-2-

LRB-3105/1
BF:skg:km

(2) The county boards of 2 or more counties may jointly establish, relocate and maintain a facility described in sub. (1). The operation and expenses of the facility shall be governed by an agreement between those counties. In a jointly established facility, authority under ss. 303.08 (2m) and 973.09 (4) and 973.11 (1) (b) may be exercised by a sheriff of any of the counties which jointly establish the facility. The agreement shall specify who has authority to act under ss. 303.08 (2m) and 973.09 and 973.11 (1) (b).

SECTION 2. 973.11 of the statutes is created to read:

973.11 PLACEMENTS WITH VOLUNTEERS IN PROBATION PROGRAM. (1)
or pleads guilty or no contest to
PLACEMENTS. If a person is convicted of one or more misdemeanors for which mandatory periods of imprisonment are not required, if the chief judge of the judicial administrative district has approved a volunteers in probation program established in the applicable county and if the court decides that volunteer supervision under the program will likely benefit the person and the community, the court may withhold sentence *or judgment of conviction* and order that the person be placed with that volunteers in probation program. Except as provided in sub. (3), the order shall provide any conditions that the court determines are reasonable and appropriate and may include, but need not be limited to, one or more of the following:

(a) A directive to a volunteer to provide one or more of the following functions for the defendant:

1. Role model.
2. Informal counseling.
3. General monitoring.
4. Monitoring of conditions set by the court.

(b) Any requirement that the court may impose under s. 973.09 (1g), (1x), (4) and (7m).

1991-92 Legislature

-3-

LRB-3105/1
BF:skg:km

1 (2) APPROVAL OF PROGRAMS. In each judicial administrative district
2 under s. 757.60, the chief judge of the district may approve volunteers in
3 probation programs established in the district for placements under this
4 section. The chief judge shall provide criteria for making approval
5 decisions under this subsection. Upon request, the chief judge shall
6 study a program and decide, based on the criteria, whether to approve the
7 program for placements under this section.
8 placed with the volunteers in probation program

9 (3) STATUS. A defendant who is ~~sentenced~~ under sub. (1) is subject
10 to the conditions set by the court. The defendant is not on probation
11 under ss. 973.09 and 973.10 and the department of corrections is not
12 responsible for supervising him or her.

13 (4) TERM. The court shall set the length of the order, which may not
14 exceed 2 years unless extended pursuant to a hearing under sub. (5). When
15 the defendant has satisfied the conditions of the order, the court shall
16 discharge ~~the person~~ ^{the person} and dismiss the charge(s) against the person if
17 judgment of conviction was not previously entered.

18 (5) FAILURE TO COMPLY WITH ORDER. (a) If the defendant is alleged
19 to have violated the conditions of an order under sub. (1), the court may
20 hold a hearing regarding the allegations. The court shall notify the
21 defendant at least 7 days prior to holding any such hearing. At the
22 hearing, the defendant has the right to each of the following:

- 23 1. Counsel.
- 24 2. Remain silent.
- 25 3. Present and cross-examine witnesses.
- 26 4. Have the hearing recorded by a court reporter.

27 (b) The court may extend the period of supervision for up to 45 days
to accommodate a hearing under this subsection.

(c) Failure of the defendant to appear at a hearing under this
section tolls the running of the period of supervision.

1 (2) The county boards of 2 or more counties may jointly establish,
2 relocate and maintain a facility described in sub. (1). The operation and
3 expenses of the facility shall be governed by an agreement between those
4 counties. In a jointly established facility, authority under ss. 303.08
5 (2m) and, 973.09 (4) and 973.11 (1) (b) may be exercised by a sheriff of
6 any of the counties which jointly establish the facility. The agreement
7 shall specify who has authority to act under ss. 303.08 (2m) and, 973.09
8 and 973.11 (1) (b).

→ INSERT (7A)

9 SECTION 2. 973.11 of the statutes is created to read:

10 973.11 PLACEMENTS WITH VOLUNTEERS IN PROBATION PROGRAM. (1)

11 PLACEMENTS. If a person is convicted of ^{or placed in custody or no contact to} one or more misdemeanors for
12 which mandatory periods of imprisonment are not required, if the chief
13 judge of the judicial administrative district has approved a volunteers in
14 probation program established in the applicable county, and if the court
15 decides that volunteer supervision under the program will likely benefit
16 the person and the community, the court may withhold sentence ^{as judgment of conviction} and order
17 that the person be placed with that volunteers in probation program.
18 Except as provided in sub. (3), the order shall provide any conditions
19 that the court determines are reasonable and appropriate and may include,
20 but need not be limited to, one or more of the following:

21 (a) A directive to a volunteer to provide one or more of the follow-
22 ing functions for the defendant:

- 23 1. Role model.
- 24 2. Informal counseling.
- 25 3. General monitoring.
- 26 4. Monitoring of conditions set by the court.

27 (b) Any requirement that the court may impose under s. 973.09 (1g),
28 (1x), (4) and (7m).

1 (2) APPROVAL OF PROGRAMS. In each judicial administrative district
2 under s. 757.60, the chief judge of the district may approve volunteers in
3 probation programs established in the district for placements under this
4 section. The chief judge shall provide criteria for making approval
5 decisions under this subsection. ^{INSERT 3A} Upon request, the chief judge shall
6 study a program and decide, based on the criteria, whether to approve the
7 program for placements under this section.

8 (3) STATUS. A defendant who is ^{placed with a volunteer in probation program} ~~sentence~~d under sub. (1) is subject
9 to the conditions set by the court. The defendant is not on probation
10 under ss. 973.09 and 973.10 and the department of corrections is not
11 responsible for supervising him or her. ^{Insert 3B}

12 (4) TERM. The court shall set the length of the order, which may not
13 exceed 2 years unless extended pursuant to a hearing under sub. (5). When
14 the defendant has satisfied the conditions of the order, the court shall
15 discharge ~~him or her~~. ^{INSERT 3C}

16 (5) FAILURE TO COMPLY WITH ORDER. (a) If the defendant is alleged
17 to have violated the conditions of an order under sub. (1), the court may
18 hold a hearing regarding the allegations. The court shall notify the
19 defendant at least 7 days prior to holding any such hearing. At the
20 hearing, the defendant has the right to each of the following:

- 21 1. Counsel.
- 22 2. Remain silent.
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- 24 4. Have the hearing recorded by a court reporter.

25 (b) The court may extend the period of supervision for up to 45 days
26 to accommodate a hearing under this subsection.

27 (c) Failure of the defendant to appear at a hearing under this sub-
28 section tolls the running of the period of supervision.

(3C)

If the ~~defendant~~ court may place a defendant

^{may}
_{be} A ~~defendant~~ may be placed under sub. (1) prior

to conviction only if a ~~def~~ deferred prosecution

agreement is reached ^d under s. 971.40. In that

case, the person is subject to the conditions set
under this section

by the court and the ^{co} conditions provided in the
agreement.

1991

DRAFTING REQUEST

Extra
Copies

LRB

50524

Date rec'd 1/27

Received by BF

Wanted soon

Drafter BF & GMM

S

A

Bill

Jt. Res.

Res.

Sub. Amdt.

Amdt.

SHORT DESCRIPTION

to SB 402

FOR

ADELMAN

BY/Representing

Craig

SUBJECT AREA

This file MAY BE SHOWN
to any legislator

(If "yes", SIGN here)

MAY CONTACT

INSTRUCTIONS:

SEE ATTACHED

Do a sub to SB402 with:

- bill on a base
- give some authority a juv. ct.
- Add LRB a 1825

Work/0	/P1	/P2	/P3	1st	2nd	3rd	4th	5th
				Drafted	BF & GMM			
				Reviewed	1-28 K.G. Jrd 4/29			
				Typist	1-28 K.G. Jrd 4/29			
Original to drafter				Proofed	1-28 K.G. Jrd 4/29			
				Submitted	1-28 K.G. Jrd 4/29			
				Jacketed	1-28 K.G. Jrd 4/29			
FE sent for				FE-S/L	FE-S/L	FE-S/L	FE-S/L	FE-S/L
				RETIRE	RETIRE	RETIRE	RETIRE	RETIRE
				TAXEXM	TAXEXM	TAXEXM	TAXEXM	TAXEXM
				LAKBED	LAKBED	LAKBED	LAKBED	LAKBED

All "/P" copies:
give to drafter

Requested ORIGINAL draft:

Received JACKET or stripes:

OK phone

(Please sign here)

[rev: 08/28/90 1991DF01(fm)]

0726/1

- ① This draft is for an individual legislator, so it cannot contain "NOTES", or a prefatory NOTE.
- ② I will edit the draft when these changes are made.

KG

- Done

md

from
Plc ~~to Linda~~ Linda

Not to apply to juvenile or

~~to~~ Do not permit person to be jailed



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0726/P1

MGD:pg

AA Note

img

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Supplement
to Enforcement*

- 1 AN ACT *to create* 971.41 and 973.115 of the statutes; relating to: the senior court
2 program. *Gen. Cat.*

Analysis by the Legislative Reference Bureau

*Analysis
INS* (This is a preliminary draft. An analysis will be provided in a later version.)

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

NOTE PREFATORY NOTE: This bill draft creates the senior court program. A person who is charged with a misdemeanor for which there is no mandatory period of imprisonment and who was under age 25 when the offense was committed is eligible for the program if the court decides placement in the program would benefit the person and the community.

had ed suspended
~~Under the bill draft, the person must enter into a deferred prosecution agreement in order to be eligible for placement in a senior court program. Under the agreement, upon successful completion of the senior court program, the charges against the person are dismissed.~~

- 3 SECTION 1. 971.41 of the statutes is created to read:
4 971.41 *Suspended* **Deferred** prosecution agreement; placement with community
5 court program. The court, district attorney and defendant may enter into a

1 ^{suspended} deferred prosecution agreement for the defendant to be placed with a senior court
 2 program under s. 973.115. The agreement must include the requirement that the
 3 defendant comply with the court's order under s. 973.115 (1). (1) (2)

4 SECTION 2. 973.115 of the statutes is created to read: (4) (2) (a)

5 **973.115 Placements with senior court program.** (1) PLACEMENTS. The
 6 court may withhold sentence ^{the} judgment of conviction and order that a person be
 7 placed in a senior court program if ^{all of the following apply} the person is convicted of or pleads guilty or no
 8 contest to one or more misdemeanors for which mandatory periods of imprisonment ^{years of age}
 9 are not required ^{Q 2.} and that the person committed when he or she was under ^{each offense under subd. 1.} 25 ⁰
 10 if the chief judge of the judicial administrative district has approved a senior court
 11 program established in the ^{that} applicable county, ^{Q 5.} and if the court decides that the senior
 12 court program will likely benefit the person and the community ^{and subject to the}
 13 limitations under sub. (3). Except as provided in sub. (3), the order shall provide any
 14 conditions that the court determines ^{Q (b)} may establish ^{conditions on the defendant's} are reasonable and appropriate. ^{placement and it shall include those conditions in its order}

15 ^{No 9} (2) **Approval of programs.** In each judicial administrative district under s.
 16 757.60, the chief judge of the district may approve senior court programs established
 17 in the district for placements under this section. ^{a county within}

18 (3) **Status.** A defendant who is placed with a senior court program under sub.
 19 (1) is subject to the conditions set by the court. The defendant is not on probation

20 under ss. 973.09 and 973.10 and the department is not responsible for supervising
 21 him or her. ^{Q 3. If the} court may place a defendant under sub. (1) prior to conviction ^{is to withhold the judgment of}
 22 a ^{suspended} deferred prosecution agreement is reached under s. 971.41. In that case, the person
 23 is subject to the conditions set by the court under this section and the conditions
 24 provided in the agreement. ^{any applicable suspended prosecution}

→ the court, the district attorney, and the defendant have entered into

"KA"

any applicable suspended
prosecution agreement

1 ~~initially~~ term. The court shall set the length of the order, which may not exceed 2
 2 years unless extended pursuant to a hearing under sub (5). When the defendant has
 3 satisfied the conditions of the order, the court shall discharge the defendant and
 4 dismiss the charges against the defendant if a judgment of conviction was not
 5 previously entered.

6 (3) ~~Failure to comply with order~~ (a) ~~Failure to comply with order~~ If the defendant is alleged to
 7 have violated the conditions of an order, the court may hold a hearing
 8 regarding the allegations. The court shall notify the defendant at least 7 days prior
 9 to holding any hearing. (At the hearing, the defendant has the right to ~~ask~~
 10 the following:

1. Counsel, the right to

2. Remain silent, the right to

3. Present and cross-examine witnesses, and the right to

4. Have the hearing recorded by a court reporter.

15 ~~and~~ The court may extend the period of supervision for up to 45 days to
 16 accommodate a hearing under this subsection.

17 Failure of the defendant to appear at a hearing under this subsection tolls
 18 the running of the period of supervision.

19 3. If the court finds that the violation occurred, it may impose a sentence,
 20 revise the conditions of the order, or allow the order to continue.

21 (6) Other modifications to order. At any time prior to the expiration of the an
 22 order, the court may shorten the length of the order or modify the conditions of the
 23 order. The court shall hold a hearing regarding a determination under this
 24 subsection upon request of the defendant or district attorney requests a hearing.

25

(END)

It is extending last
 order order sub (B) (b) from original revising
 the order of the court under sub. (3) (b) 3.

INS 3/25

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0726/lins
MGD:.....

1

analysis INSERT

Under current law, if a defendant pleads guilty or no contest to or is convicted of one or more misdemeanors for which imprisonment is not required, the court may withhold the entry of judgment or the sentence and order the defendant to be placed with a volunteers in probation program. The defendant's participation in the program is subject to conditions set by the court in its order, which may include a requirement that the defendant be confined for specified periods of time. In addition, if the defendant is placed in the program before conviction, the defendant must enter into a deferred prosecution agreement with the district attorney and the court and is subject to any conditions established in that agreement. If the defendant complies with the placement order, the court discharges the defendant and, unless the defendant was previously convicted, dismisses the case. If the defendant does not comply with the order, the court may impose a sentence or modify or continue the order. Children who are alleged or found to be delinquent based on an act that would be a misdemeanor if committed by an adult may also be placed in a volunteers in probation program. The creation of a volunteers in probation program is subject to the approval of the chief administrative judge of the judicial administrative district.

This bill authorizes the creation of senior court programs for adult offenders. Under the bill, if a defendant pleads guilty or no contest to or is convicted of one or more misdemeanors for which imprisonment is not required, and the defendant was less than 25 years old at the time of each offense, the court may withhold the entry of judgment or the sentence and order the defendant to be placed with an approved senior court program. The defendant's participation in the program is subject to conditions set by the court in its order. The order, however, may not require the defendant to be confined. In addition, if the defendant is placed in the program before conviction, the defendant must enter into a suspended prosecution agreement with the district attorney and the court and is subject to any conditions established in that agreement. If the defendant complies with the placement order and, if applicable, the suspended prosecution agreement, the court discharges the defendant and, unless the defendant was previously convicted, dismisses the case. If the defendant does not comply with the order or a suspended prosecution agreement, the court may enter a judgment of conviction if it was not previously entered, impose a sentence, revise the conditions or the length of the order, or continue the order.

The senior court program created by this bill may not be used in juvenile delinquency proceedings.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

2

INSERT 2/3 ✓

3

SECTION 1. 972.13 (1) of the statutes is amended to read:

Strike spaces

972.13 (1) Except as provided in s. 973.11 (1) or 973.115 (2), a judgment of conviction shall be entered upon a verdict of guilty by the jury, a finding of guilty by the court in cases where a jury is waived, or a plea of guilty or no contest.

History: 1975 c. 39, 199, 1977 c. 333, 418; 1979 c. 89; 1983 a. 261, 435, 538; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1997 a. 250, 275, 283; 1999 a. 32.

INSERT 2/21

No A The court may not require the person to be confined as a condition of the placement order.

INSERT 3/25

SECTION 2. 974.06 (1) of the statutes is amended to read:

974.06 (1) After the time for appeal or postconviction remedy provided in s. 974.02 has expired, a prisoner in custody under sentence of a court or a person convicted and placed with a volunteers in probation program under s. 973.11 or a senior court program under s. 973.115 claiming the right to be released upon the ground that the sentence was imposed in violation of the U.S. constitution or the constitution or laws of this state, that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

History: 1971 c. 40 s. 93; 1977 c. 29, 187, 418; 1981 c. 289; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1991 a. 253.

SECTION 3. Initial applicability.

(1) This act first applies to persons charged with misdemeanors on the effective date of this subsection.

Mentkowski, Annie

From: Cekosh, Nick
Sent: Tuesday, February 04, 2003 1:13 PM
To: LRB.Legal
Subject: Draft review: LRB-0726/1 Topic: Senior citizen court programs

It has been requested by <Cekosh, Nick> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-0726/1 Topic: Senior citizen court programs